

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

EGBERT FERGUSON,

Plaintiff,

v.

CAPTAIN GEORGE SOLOMON, CLARA  
SOLOMON d/b/a M/V EAST PACK NO 1,

Defendants

CIVIL NO. 2003/78

TO: Eszart A. Wynter, Esq.  
Mark L. Milligan, Esq.

ORDER ON PLAINTIFF'S MOTION IN OPPOSITION  
TO DEFENDANTS' MOTION FOR THE POSTING OF BOND

THIS MATTER came for consideration on Plaintiff's Motion in Opposition to Defendant's Motion for the Posting of Bond. Defendants filed a reply to such motion in opposition. No further pleadings are required.

As correctly noted by Defendants in their reply, there is no motion by them for posting of bond but rather a demand therefor pursuant to 5 V.I.C. § 547. In any event, the matter is in issue pursuant to Plaintiff's motion and Defendant's reply.

As recognized by the cited provision of Wright, Miller (§ 2671):

Typically Federal courts either by rule or by case to case determination follow the forum state's practice with regard to security for costs..., this is especially common when a non-resident party is involved.

The Virgin Islands has enacted 5 V.I.C. § 547(a) in such regard

and this court has consistently applied such statute. See e.g. *Ingvolstad v. Estate of Young*, D.V.I. 1981, 18 V.I. 346; *Sinclair v. Overseas Mechanical Contractors, Ltd.*, D.V. I. 1979, 15 V.I. 179.

5 V.I.C. § 547(c)(1) allows the security required by § 547(a) to be provided by filing an undertaking that (Plaintiff) will pay costs awarded against Plaintiff not exceeding \$1,000.00.<sup>1</sup> Such section appears self-effectuating and does not expressly provide for judicial discretion. The phrase "not exceeding the sum of \$1,000.00" may be read to apply to the costs to be paid from such bond (*i.e.* the \$1,000.00 bond shall be used to pay costs not to exceed \$1,000.00), but such meaning would render the phrase redundant and unnecessary. Section 547(c)(2) contemplates an upward adjustment by the Court and § 547(e) clearly allows downward adjustment of the (maximum \$500.00) undertakings for additional Defendants.

The Court has previously allowed Plaintiffs' attorneys to provide such surety upon certification that the attorney has liquid assets in the Virgin Islands of such amount and will promptly pay such costs as may be awarded (up to the amount of

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1. Section 547(c) V.I.C. provides that the undertaking shall be increased **not to exceed \$500.00** for each additional Defendant).

the undertaking).

Upon consideration, the Court finds that the Solomon Defendants' interest herein are in tandem and that accordingly, a total bond of \$1,050.00 is appropriate. Accordingly, it is hereby;

**ORDERED** as follows:

1. Within ten (10) days from the date of this Order, Plaintiff shall comply with 5 V.I.C. § 547(c)(1) by filing with the Clerk of Court an undertaking with sufficient sureties<sup>2</sup> to the effect that they will pay such costs as may be awarded against Plaintiff by judgment or in the progress of the action not exceeding the sum of \$1,050.00
2. Such surety may be provided by Plaintiff's attorney as provided above.
3. Defendants shall file responsive or other appropriate pleadings within ten (10) days of service of notice of such compliance by Plaintiffs.

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2. Plaintiff may of course file a cash bond in such amount.

*Ferguson v. Captain George Solomon*  
Civil No. 2003/78  
Page 4 of 4 dated July 2, 2003

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ENTER:

Dated: July 2, 2003

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JEFFREY L. RESNICK  
U.S. MAGISTRATE JUDGE

ATTEST:  
WILFREDO MORALES  
Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk